



Department of Justice

STATEMENT

OF

**PAUL J. McNULTY
UNITED STATES ATTORNEY
EASTERN DISTRICT OF VIRGINIA**

BEFORE THE

**SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES**

CONCERNING

**H.R. 1751,
THE SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005**

PRESENTED ON

APRIL 26, 2005

**STATEMENT OF PAUL McNULTY
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FOR THE EASTERN DISTRICT OF VIRGINIA**

**Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives**

April 26, 2005

Chairman Coble, Ranking Member Scott, and Members of the Subcommittee, I am Paul J. McNulty, United States Attorney for the Eastern District of Virginia. It is an honor to appear before you today to discuss the important issue of the safety of our judges, prosecutors, law enforcement officials, victims, and witnesses involved in the American judicial system.

Concern over the safety of individuals involved in the judicial process has been escalating over the last several years, coming to a dramatic crescendo in February and March of this year when a state court judge was killed and members of a federal judge's family were murdered. Violence and threats of violence against those who administer justice or who discharge their duty as jurors and witnesses tear at the very fabric of the rule of law. We cannot let the insidious effects of pre-emptive threats by criminal or civil litigants, or fear of retaliation, influence or chill the decisions and actions of those upon whom our citizens rely to redress both public and private grievances.

In August of 1993, a criminal defendant by the name of Gary McKnight was scheduled to be sentenced on marijuana manufacturing charges. His farm, where he raised his illicit crop, had been forfeited to the United States. The night before he was to appear in federal court in Topeka, Kansas, he armed himself with two handguns and made 24 shrapnel bombs filled with live ammunition. On his

way to the courthouse the next day, he left a truck containing explosives in front of an Oskaloosa sheriff's department annex. The truck later exploded. At the federal courthouse, McKnight headed toward the United States Attorney's offices. He mistakenly got off the elevator on the floor housing the Clerk of Court, where he shot and killed a Court Security Officer (CSO), wounded another CSO, and shot a receptionist three times. Inside the office he wreaked havoc and devastation by igniting improvised explosive devices. The rampage ended when he killed himself. The place looked like a war zone, and indeed it was. The night before, McKnight recorded a statement on a video tape. His intent was clear when he said:

They declared war on me. I'm just answering . . . Let me die on my feet, rather than live on my knees

Even more chilling was one of his final statements, in which he said:

There's only one rule in a gun fight – bring a gun. I got mine, let's see if they got theirs.

Two years later, a complete side of the Alfred P. Murrah Federal Building was blown away by 5,000 pounds of explosives, leaving 168 dead and hundreds wounded. Eight of the dead were federal agents. The recent ten-year anniversary of that tragic event reminds us again of the risk that government employees encounter by simply being public servants.

The effects of domestic terrorism, like the Oklahoma City bombing, and the more contemporary threat of international terrorism on the security at federal courthouses and U.S. Attorney facilities can be seen around the country, but perhaps no more poignantly than in Alexandria, Virginia. Our federal courthouse complex was being built when the Oklahoma City bombing occurred. As a

result, security upgrades were installed, such as a blast wall, intrusion detection devices, and the elimination of public parking in the building's garage.

Since September 11, concern has increased about threats to those courthouses and U.S. Attorney's Offices where terrorists and their allies are being brought to justice. In the Alexandria courthouse complex, for example, visible security enhancements were installed, including jersey walls, hydraulic barriers, camera systems, screening devices, shelters-in-place and chemical detection systems. On February 8, 2002, we participated in a drill with federal, state and local law enforcement and first responders, including the elite U.S. Marine Chemical Biological Incident Response Force, to test the collective reaction to a notional chemical attack on the courthouse.

In addition, a court security committee has been in place for many years. The focus of the committee is the security of the court complex in Alexandria, as well as the other judicial facilities in the District, and the purpose is the joint discussion of security issues between the Marshal, the court and the court family. These periodic meetings, chaired by the chief judge, give opportunities for the court to discuss security concerns and give approval to proposed security upgrades. Which proposals ultimately are implemented depends upon a number of factors, including the willingness of the court to have the security measures in place. Moreover, as I understand it, the level of security in a courthouse may be dependent, in some cases, on the court's willingness to have the security measures implemented.

My office has a very close working relationship with the Marshals, and we have participated in the court security meetings on several occasions. The Marshal and I frequently share threat and event information, so that our individual responses are well coordinated with regard to the safety and security

of our witnesses, the potential threat level of cases being indicted, and the possible public and press attention high profile cases might receive. We also have an informal mutual aid agreement whereby the Marshals respond to duress alarms in our offices, and our nationally certified, medical First Responders respond to medical emergencies in the courthouse and Marshal's facilities.

On almost a daily basis, as I turn into the garage at the courthouse, I now see Deputy U.S. Marshals dressed in their tactical gear armed with semiautomatic weapons standing along the sidewalk, in marked contrast to pre-9/11 security. Last week, the Marshal's high security presence was, in part, a response to the trial of Ali Al-Timimi, who is charged with material support to a terrorist organization, a sequel to the Virginia Jihad case. However, the Marshals are not standing guard only because of the terrorism cases we have pending, but also because of the nature of the violent crime we are prosecuting.

Currently, we are in the middle of a trial of four MS-13 gang members for the capital murder of a federal witness. This 17-year-old witness, who was pregnant at the time of her murder, was going to testify in another MS-13 murder case when she was allegedly stabbed to death. The order to murder her, as alleged in the indictment, was given from the jailhouse. MS-13 is a notoriously violent gang, and we must provide a responsible level of security for all those involved in the administration of justice in these types of cases.

State courts are also faced with these same issues. Fairfax and Prince William Counties in Virginia were the venues for the trials of Malvo and Muhammed, the two Washington, D.C., area snipers. Despite the change of venue, significant security measures still were required in preparation for those trials, and the cost to implement those measures was substantial. Examples of violence in state

courtrooms abound, and as we saw in the Fulton County, Georgia, incident, security has to be increased.

The murder of members of U.S. District Judge Lefkow's family is a recent, egregious example of retribution for her judicial ruling, but not the only example. In 1979, Judge John Wood Jr., was gunned down at his home in San Antonio because the defendants in a Columbian drug-smuggling case thought he would impose a maximum sentence on them. Judge Richard J. Daronco was killed while working in his yard at his home near White Plains, N.Y., by a retired New York City Police Officer in search of revenge for the dismissal of a \$2.5 million lawsuit filed by his daughter. A year later, Eleventh Circuit Court of Appeals Judge Robert S. Vance was killed by a mail bomb sent to his home because he did not vote to overturn the defendant's conviction for possessing a pipe bomb. The defendant was convicted in state court and sentenced to death.

There are many more examples of threats to the judiciary which have not resulted in the same level of violence, but have significantly impacted the due administration of justice. Amr Moshen was indicted last month by a federal grand jury in San Francisco in a multiple count indictment, alleging in part that Moshen solicited another person to burn a witness's car in order to intimidate the witness, and that he also solicited another to kill the federal judge who had been handling a federal civil patent case involving the defendant. Moshen was charged under 18 U.S.C. 373, Solicitation to Commit a Crime of Violence, and his trial is pending.

In January of this year, David Roland Hinkson was convicted in Boise, Idaho, for soliciting the murders of a U.S. District Judge, a federal prosecutor and an Internal Revenue Service Special Agent, in retaliation for a prior criminal case brought against him. He had offered \$10,000 per killing to the

purported contract killer. The judge had not only handled the previous criminal case, but had also dismissed a civil case Hinkson filed alleging that his constitutional rights were violated by the prosecutor and investigator. Hinkson was convicted for violations of 18 U.S.C. 373, Solicitation to Commit a Crime of Violence. Each count of solicitation to commit murder carries a maximum penalty of 20 years incarceration. He was scheduled to be sentenced yesterday.

The Marshal's Service responds on average to 700 threats to the judiciary a year. In 2004, the Marshals provided protective details for 39 judges and prosecutors. The sheer number of threats shows not only the potential danger facing our judges, but how lucky we have been not to lose more judges to litigation-induced violence.

Unfortunately, Judges are not the only ones threatened or killed in the line of duty. In the Hinkson case, to which I just referred, the targets of the murder plot also included the prosecutor and investigator. The National District Attorneys Association is reported to have conducted a survey in 2001 which revealed that 81 percent of large state prosecutor's offices had experienced work-related threats or assaults. There have been more than a thousand members of the United States Attorney's Offices threatened since 1995. This is a conservative estimate, based on "urgent reports" filed by the districts with the Executive Office for United States Attorneys. In Utah, for example, a federal case is currently pending against two individuals for allegedly making, or aiding and abetting in the making, of threats against the federal prosecutor who was prosecuting a RICO case against members of the "Soldiers of the Aryan Culture." These defendants are charged with Mailing Threatening Communications, under 18 U.S.C. 876, and with Conspiracy to Impede or Injure an Officer, under 18 U.S.C. 372. If convicted of both counts, the defendants would face a maximum 16 years in prison.

On October 11, 2001, Assistant United States Attorney Tom Wales was at his home in Seattle, Washington, working on his computer when he was shot by a sniper situated in his back yard. He died the next day. Despite a substantial reward offered by the Department of Justice, Wales's murderer has not been found. While this murder shook the U.S. Attorney community, it was not the first murder of a prosecutor. A national memorial to prosecutors located in Columbia, South Carolina, now displays the names of nine state and federal prosecutors killed since 1967.

Several years ago, threats were made against a female prosecutor and her daughter in connection with the prosecution of a drug gang. The threats were very sexually explicit and very credible. We learned that the Marshal's Witness Protection Program was not a suitable vehicle to relocate her and her family. In the end, we moved her under a different name to another state. The Department of Justice paid for her relocation expenses and assisted her in establishing a new identity.

The response to most threats against federal prosecutors, however, is not as comprehensive. The U.S. Marshal's Service, under certain circumstances, may provide a 72-hour protective detail, which may be extended if the threat is verified and the continuation of the detail is necessary. Bullet proof vests have also been provided to the person threatened. In other cases, the Marshals may simply present a briefing on personal and home security. The U.S. Attorney may also be authorized to pay for a home security system and a cell phone for the threatened Assistant United States Attorney (AUSA). The Deputy Attorney General may, in limited circumstances, authorize a federal prosecutor to be deputized by the U.S. Marshal for the limited purposes of being able to carry a concealed weapon for self protection. The FBI will also investigate the threats against AUSAs. I understand that

there are similar processes in place for the protection of federal judges, which will be described by testimony from a representative of the U.S. Marshal's Service.

But let's be clear, these measures are reactive in nature, and are only effective if we learn about the threats before they are carried out. More severe penalties and broader federal jurisdiction are also after-the-fact responses. Once the threats are received or the violence occurs, the damage has been done. The employees of the Judicial and Executive Branches who interact with violent criminals and disgruntled litigants deserve not only the respect of the nation but also a safe workplace and reasonable protection for themselves and their families.

Conclusion

Threats, intimidation and violence against judges, prosecutors, law enforcement officers, victims and witnesses embolden future perpetrators to intimidate or eliminate their perceived roadblocks to freedom and the violence becomes self-perpetuating. Violence in our courtrooms reduces the integrity and effectiveness of the judicial process, diminishes the public's confidence in our judicial system, and makes cooperation by witnesses and victims less likely. Our challenge is to find ways to help federal and state judicial systems act pro-actively rather than reactively, so that they can fulfill the dream of our forefathers to achieve justice for all, unaffected by untoward, outside influences.

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